FINAL

MANAGEMENT AUDIT REPORT

OF THE

ZOO TRAIN AND RELATED FACILITIES AND BIOPARK REVENUES

CULTURAL SERVICES DEPARTMENT

REPORT NO. 02-125





City of Albuquerque P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103 Office of Internal Audit

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Internal Audit Committee City of Albuquerque Albuquerque, New Mexico 87102

Audit: Cultural Services Department

BioPark Division

Zoo Train and Related Facilities and BioPark Revenues

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INTRODUCTION

The Office of Internal Audit conducted an audit of the Zoo Train and related facilities construction project, which is managed by the Biological Park Division (BioPark) of the Cultural Services Department (Cultural Services). The report also includes findings related to Audit No. 00-125, BioPark Revenues, which are being reported with the Zoo Train audit because of some overlapping areas. The BioPark consists of the Rio Grande Zoological Park (Zoo), the Albuquerque Aquarium (Aquarium) and the Rio Grande Botanic Garden (Botanic Garden). The Zoo Train audit was included in the fiscal year (FY) 2002 approved audit plan, and the BioPark Revenue audit was included in the FY2000 audit plan.

SCOPE

Our audit did not include an examination of all the functions, activities, and transactions of the Zoo Train and related facilities construction project and BioPark revenues. Our audit test work was limited to the following areas:

- Review policies and procedures for BioPark revenues.
- Review the management of BioPark concession contracts.
- Review adequacy of internal controls.
- Review controls, policies, and procedures related to the construction project.

- Review award and administration of the contracts related to design, engineering, construction, procurement, etc.
- Review project management processes and controls.
- Review financial transactions relating to the project
- Review compliance with City and Departmental policies, procedures, rules and ordinances.
- Review compliance with Federal and State Statutes, and applicable Grant requirement/restrictions, if any.

This report and its conclusions are based on information taken from a sample of transactions and do not purport to represent an examination of all related transactions and activities. Our fieldwork was completed on October 9, 2003. The audit report is based on our examination of BioPark activities through the completion of our fieldwork and does not reflect events or accounting entries after that date. The audit was conducted in accordance with Government Auditing Standards, except Standard 3.49 requiring an external quality control review.

FINDINGS

The purpose of an internal audit is to identify changes in the auditee's activities, which would improve its effectiveness, efficiency, and compliance with administrative policies and applicable rules and regulations. Therefore, the auditee's activities that appear to be functioning well are not usually commented on in audit reports.

Many of the issues in this report were previously identified in Audit Report No. 96-121, Management Audit of Rio Grande Zoological Park, Cultural and Recreational Services Department, which was issued on March 19, 1997. Although the Cultural and Recreational Services Department made a commitment to resolve the issues, many of the same or similar problems persist.

The following findings concern areas that we believe would be improved by the implementation of the related recommendations.

1. <u>CULTURAL SERVICES SHOULD INCREASE ITS OVERSIGHT OF BIOPARK ACTIVITIES</u>

Prior to fiscal year (FY) 1994, the Zoo was a separate City Department. In FY94 it was combined with other departments as a division of the Cultural and Recreational Services

Department, which is now called the Cultural Services Department. As facilities were added, the Zoo Division became the BioPark Division.

The Zoo retained its departmental fiscal staff when it became a division of the larger department. As a result, the BioPark has maintained control of its finances, for both capital projects and operations, with little oversight by the Cultural Services Fiscal Division.

Although BioPark fiscal activity is rolled up into the Cultural Services Department's financial reports, there does not appear to be sufficient review of individual BioPark transactions by Cultural Services personnel to determine if the transactions are appropriate and properly recorded. This is the case for both operating activities and capital projects.

The findings in this report indicate that the controls over BioPark finances need significant improvement to ensure that City money is properly spent and accounted for. Many of the issues in this report were previously identified as findings in 1997. Although the issues were reported to Cultural Services and BioPark Division management, the problems remain unresolved.

RECOMMENDATION

Cultural Services should increase its oversight of BioPark financial activities. The Cultural Services Director should establish a dollar limit for the BioPark Director's signature authority, to ensure that large financial transactions are subject to another level of review.

Cultural Services should ensure that controls are in place to ensure that all BioPark revenue is properly recorded, funds are used for their approved or designated purpose, money is not spent for projects until the project is properly approved and all financial transactions and activities are properly documented.

EXECUTIVE RESPONSE FROM CULTURAL SERVICES

"The City's financial controls are the same for the Cultural Services Department (CSD) as they are for all other City departments. The Administration will continue to emphasize proper recording of all financial transactions for all departments. The current CSD director reviews and approves all requisitions for operating and CIP purchases."

2. THE CAO SHOULD REVIEW THE ARRANGEMENTS FOR THE COMPLETION OF THE AQUARIUM AND BOTANIC GARDENS GIFT SHOPS.

The City has a contract with a concessionaire who operates the gifts shops at the various BioPark facilities. This contract states that the concessionaire shall make rent payments to the City based upon sales revenues at these gift shops. Sales at the gift shops at the Aquarium and Botanic Gardens generated approximately \$445,000 in rent revenue during the period from 1998 through 2003. However, the concessionaire withheld the rent revenue as payments for completing the building of the gift shops at the Aquarium and Botanic Gardens.

In February 1996, the BioPark Director sent a letter to the President of the concessionaire, which authorized the concessionaire to build the new gifts shops. The letter from the BioPark Director authorized the concessionaire to ". . .withhold excess payments up to the amount of \$356,000 for expansion of the Botanic Garden and Aquarium gift shops."

The agreement was formalized at the completion of the project in June of 1997. The President of the concessionaire sent a letter agreement to the BioPark Director, which stated in part: "To date, the total monies expended on your behalf are \$301,843 excluding interest. It is agreed that repayment of this loan to the City of Albuquerque is to be made by us withholding rent due to the City from sales at the Aquarium and Botanical Garden shops. . . .We have estimated the interest on the above loan to be approximately \$92,600. This estimate is based on the loan being paid in full by the year 2002 at an annual interest rate of 10.5%." Both the President of the concessionaire and the BioPark Director signed the letter agreement.

There is no indication that the loan arrangement was approved or reviewed by the Cultural Services Director or anyone else in a position superior to that of the BioPark Director. Although the BioPark Director did not have actual authority to make the commitment on behalf of the City, the Concessionaire believed that he had the authority and acted accordingly.

The City Legal Department characterizes this as an agreement for leasehold improvements. However, whether it is called a loan or leasehold improvements, it created a liability for the City including interest payable to the Concessionaire. The voters approved the construction of the Aquarium and Botanic Garden as part of the City's Quality of Life projects, which were funded by a ¼ cent tax. It is not clear if the project description for the construction included the completion of the Aquarium and Botanic Garden gift shops.

The City's cost of borrowed money in 1997 was significantly lower than the 10.5% interest rate charged by the concessionaire. Further, the Quality of Life projects were financed by taxes and did not require the issuance of debt. Therefore, the City may not have needed to pay interest for the completion of the gift shops. The City will have paid a total of \$176,436 in interest expense when the loan for completion of the Botanic Garden and Aquarium gift shops is fully paid.

The letter agreement for the loan states "It is further agreed that if the total amount due [the concessionaire], three hundred one thousand eight hundred and forty-three dollars (\$301,843) plus interest cannot be fully paid from rent related to sales at the Aquarium and Botanic Garden shops by the end of the contract term, then the balance due [the concessionaire] will be deducted from rent due the City of Albuquerque for sales at the Rio Grande Zoo shops." The loan payments made through withheld concession rent revenue payments and scheduled future payments are as follows:

Fiscal Year	Loan Payment
1997	\$50,712
1998	75,118
1999	64,569
2000	65,628
2001	68,749
2002	63,603
2003	57,138
Total Paid to date	<u>445,517</u>
Future Payments	
April 15, 2004	4,193
July 15, 2004	14,284
Oct. 15, 2004	<u>14,285</u>
Total Future Payments	<u>32,762</u>
TOTAL LOAN PAYMENTS	<u>\$478,279</u>

Similar issues were raised in Audit No. 96-121. The audit identified numerous instances where the Zoo Director (now the BioPark Director) instructed the food concessionaire to procure items and pay invoices by netting the costs against rent revenue that was due to the City of Albuquerque. The audit also identified contracts that were signed by the Zoo Director although he did not have the authority to make the commitments.

The arrangement for financing of the completion of the Aquarium and Botanic Garden gift shops created several problems for the City:

- The financial transactions related to the letter agreement were not recorded in accordance with Generally Accepted Accounting Principals (GAAP) as required by the New Mexico State Auditor's Rule, §2.2.2.10 NMAC.
 - The liability for the loan was not recorded on the City's books nor were the
 expenditures to repay the cost of the completion of the gift shops and the
 associated interest expenditures.
 - o The revenue resulting from rent at the Aquarium and Botanic Garden gift shops was not recorded, thus understating BioPark revenue by more than \$445,000 during the past seven years.
 - The value of the Aquarium and Botanic Garden gift shops may not be properly recorded as City owned fixed assets.
- The City paid a significantly higher rate of interest than was necessary for the loan.

RECOMMENDATION

The CAO should review the unauthorized creation of a City liability and take appropriate action.

Cultural Services should provide the Department of Finance and Administrative Services (DFAS) with the information necessary to properly record the Aquarium and Botanic Garden gift shops as City assets. In addition, the corresponding liability should be recorded.

EXECUTIVE RESPONSE FROM CAO

"The CAO will review the situation, as recommended.

"Department of Finance and Administrative Services (DFAS) and CSD will ensure that transactions are recorded in compliance with generally accepted accounting principles."

3. <u>CULTURAL SERVICES SHOULD AWARD CONCESSION CONTRACTS IN</u> ACCORDANCE WITH THE PUBLIC PURCHASES ORDINANCE

As discussed above, the City has a contract with a concessionaire who operates the gift shops at the various BioPark facilities (Zoo, Aquarium and Botanic Gardens). This contract originated in 1991. In 1993, the contract was amended. The amendment provided for \$100,000 for capital improvements to be made by the concessionaire to expand the concessions at the Zoo and the amendment extended the contract period to September 30, 2003.

This contract states, "Any holding over by Concessionaire after termination of this Agreement shall not renew or extend the Agreement, but shall operate and be construed as a tenancy from month to month . . ."

Concession Facilities at the Aquarium and Botanic Gardens

According to the contract, it covered the gift concession facilities located at the Rio Grande Zoological Park, located at 903 Tenth Street SW. When the City opened the Aquarium and the Botanic Gardens, the City allowed this concessionaire to operate the concessions facilities at the Aquarium and the Botanic Gardens.

Cultural Services should have either prepared an RFP for proposals to operate the gift shops at the Aquarium and Botanic Gardens, or amended the concession agreement for the gift shops at the Zoo to include the new facilities. However, the City gave the Concessionaire excusive rights to operate the new gift shops without a formal process or documentation.

The Public Purchases Ordinance requires that concession agreements, which result in anticipated revenues of more than \$55,000 annually, must be approved by the City Council. The Zoo concession agreement was signed by the CAO, but it was not approved by the City Council because at the time of the original contract, anticipated revenues were less than \$55,000. City Council approval was not obtained when the Aquarium and Botanic Gardens concessions were opened, because the City did not prepare a new agreement or an amendment to the existing agreement to include the new facilities.

Cultural Services permitted the Zoo concessionaire to operate the concession facilities at the Aquarium and the Botanic Gardens without obtaining the approval of the Mayor or the City Council. The revenue from these concession facilities resulted in annual revenues to the City in excess of \$55,000. For example, for the 12-month period from July 1, 2002 through June 30, 2003, the gift concession operations of the Aquarium and Botanic Gardens generated rent revenue due to the City of \$57,138. However, as noted above in Finding No. 2, the rent revenue due to the City was not paid to the City, but was applied against the loan.

A similar issue was identified in Audit Report No. 96-121. The food concessionaire for the Zoo was allowed to expand its food concession operation to include the Aquarium and Botanic Gardens without a procurement process or a contract amendment.

According to the BioPark Director, the definitions in Section 1 of the concession agreement allowed him to give the Concessionaire the exclusive rights for the gift shops

at the Aquarium and Botanic Gardens. Section 1.2 states, "Concession Facilities. As used herein, contemplates and includes all concession facilities at the Zoo used to sell merchandise, including the gift shop, the Safari Junction facility, the mobile gift carts and any other concession facilities agreed upon in writing by the Zoo Director and the Concessionaire, all of which shall be operated exclusively by the Concessionaire under the terms of this agreement." Section 1.10 of the agreement states, "Zoo. The Rio Grande Zoological Park including the Zoo buildings and the areas within the Zoo buildings." The agreement does not mention the addition of other separate facilities of the BioPark such as the Aquarium and Botanic Gardens.

Vendor Operation of BioPark Concession Facilities After Term of Contract

The contract with the concessionaire who operates the gifts shops at the various BioPark facilities (Zoo, Aquarium and Botanic Gardens) expired on September 30, 2003. It was extended to November 2, 2003. As of December 10, 2003, this concessionaire continued to operate these concession facilities as a tenancy from month to month.

A Purchasing Division buyer informed us that BioPark personnel prepared a request for proposal (RFP) in October 2003 for the BioPark gift concessions; however the agreement expired in September 2003. Once the RFP is issued there will be additional time involved for offers to be prepared and submitted, for evaluation of the offers and for Administration and City Council approval of the resulting award.

RECOMMENDATION

Cultural Services should ensure that either new agreements are prepared after a competitive process, or existing concession agreements are modified, when new facilities are added. When a concession arrangement is expected to yield revenue to the City of more than \$55,000 per year, the approval of City Council should be obtained.

The DFAS Purchasing Division should expedite the release of the RFP for the gift concessions at the BioPark

Cultural Services should ensure that RFPs are prepared well in advance of concession agreement expiration.

EXECUTIVE RESPONSE FROM CULTURAL SERVICES

"CSD concurs that agreements should be reviewed for possible modifications when new facilities are added. When the concession agreement was expanded to include the Botanic Garden and Aquarium,

the City legal department reviewed it and concluded that, since the zoo was a function of the BioPark, the concession agreement encompassed the entire BioPark.

"CSD agrees. The department now has a contracts specialist to ensure timeliness in the future in the contract process.

"The purchasing division is expediting the release of the necessary RFP."

Auditors' Comment:

Government Auditing Standards (the Yellow Book) §8.34 require that "When the audited entity's comments oppose the report's findings, conclusions, or recommendations and are not, in the auditors' opinion, valid, or when planned corrective actions do not adequately address the auditors' recommendations, the auditors should state their reasons for disagreeing with the comments or planned corrective actions. The auditors' disagreement should be stated in a fair and objective manner. Conversely, the auditors should modify their report as necessary if they find the comments valid."

In accordance with Yellow Book Standard §8.34, Internal Audit submits the following comment: CSD did not provide sufficient, competent and relevant evidence to support its contention that the Legal Department reviewed the agreement, when the new facilities were added, and determined that it encompassed the entire BioPark. The agreement refers only to the Zoo and defines the Zoo. A written Legal Opinion was not prepared nor was the agreement amended to reflect that the agreement was for the entire BioPark rather than just the Zoo.

4. <u>CULTURAL SERVICES SHOULD IMPLEMENT A REVIEW PROCESS TO ENSURE THAT THE CONCESSIONAIRES AT THE BIOPARK MAKE ALL PAYMENTS DUE TO THE CITY.</u>

The auditors reviewed the BioPark's internal controls relating to the review and processing of payments to the City from BioPark concessionaires. We noted the following problems:

- BioPark Fiscal personnel are not adequately involved in the concessionaire payment review and approval process.
- The BioPark directly receives the payments (checks) from the concessionaires. The concession contracts specifically require that ". . . payment shall be in the form of a check made payable to the 'City of Albuquerque Rio Grande Zoological Park'"
- The Concessionaire sends the concession reports and payments to the BioPark Director. Although the BioPark Fiscal personnel deposit the payments, they do not review the Monthly Gross Receipts reports to determine if the payment amounts are correct.
- The BioPark does not have adequate documentation to substantiate that the Concessionaire made all of the contractually required payments.
- The Cultural Services fiscal staff is not involved in the processing or recording of the concession payments.

A. Questioned Payments from the Gift Shop Concessionaire

We reviewed documentation, provided by the BioPark Director, relating to payments made by the gift shop concessionaire. We were unable to verify that some payments that were due to the City were in accordance with the terms and conditions of the agreement. Additionally, we could not determine that some required payments had actually been made.

For example, a \$7,500 payment for the Zoo gift shop Concession License for the period of July 1, 1998, through September 30, 1998, was required from the concessionaire. We were unable to verify that this payment had been made.

We were also unable to verify, from the documents provided by the BioPark, that all the required Zoo gift concession payments due the City had been made for years 1998, 1999 and 2000. These were payments that are based upon a percentage of the concessionaire's gross revenues. For example, there were no documents on file at the BioPark to show that the gift shop concessionaire had actually made the following payments:

- the fourth payment of \$5,607, required to be paid in 1998
- the first payment for \$6,471, due in 1999
- the first payment due in 2000, for \$8,239

Additionally, we could not verify from the documents provided by the BioPark, that the minimum annual guarantee payment of \$30,000 for the Zoo gift concession had been made in 1999.

B. Weak Internal Control Processes

The BioPark does not have an adequate review process to verify the accuracy of payments that are due from this concessionaire. BioPark fiscal personnel are not given the documents necessary for performing a thorough review of the accuracy of the payments.

Payments from the food concessionaire are sent directly to the BioPark Director. These monies are not routinely deposited the following business day after they are received, as is required by state statute and the City's cash handling regulations. There is not an adequate segregation of duties relating to the receipt, review and processing of revenue payments from concessionaires.

C. Assessment of Late Fees on Gift Shop Concessionaire Payments

D. Payments from the Food Concessionaire Are Not Verified

The City has another agreement with a concessionaire to provide food concessions at the BioPark. The payment documentation that is maintained by the BioPark, regarding the agreement with the concessionaire is incomplete. BioPark personnel do not have sufficient documentation to be able to determine if the concessionaire is making accurate payments, and if the information reported by the concessionaire is valid and correctly stated. Most of the supporting documentation is maintained at the food concessionaire's home office.

E. Unrecorded Receivables

The percentage payments for the gift shops at the Zoo are calculated in November for the preceding fiscal year. They are then paid in four equal payments by January 15,

April 15, July 15, and October 15. These amounts due are not recorded as receivables on the City's accounts receivable system or the general ledger.

This is a repeat finding from Audit Report No. 96-121. That audit identified payments that could not be verified, lack of separation of duties, contract requirements that were not enforced and a general lack of controls over the concession contracts.

RECOMMENDATION

Cultural Services should amend the BioPark contracts to have payments sent directly to the City's Treasury Division, rather than the BioPark.

Cultural Services should implement a review process to ensure that all payments due to the City from BioPark concessionaires are made, as required in the agreements and contracts.

The Cultural Services Director should review this situation and ensure that there is an adequate separation of duties regarding the review and processing of BioPark concessionaire payments.

The Cultural Services Director should ensure that fiscal personnel at the BioPark and Cultural Services are adequately involved in the internal controls related to the receipt and processing of revenue payments from concessionaires.

Cultural Services should ensure that receivables for the percentage payments are properly recorded.

EXECUTIVE RESPONSE FROM CULTURAL SERVICES

"CSD concurs and will ensure that controls and processes are in place to ensure proper recording of all concessionaire-related transactions."

Auditors' Comment

Internal Audit will perform a follow-up review of this audit to determine if all of the appropriate controls, as identified in the recommendation, have been implemented to ensure that concessionaires make all payments that are due to the City.

5. <u>CULTURAL SERVICES SHOULD REVIEW THE BIOPARK'S CONCESSION</u> AGREEMENT AND CONTRACT ADMINISTRATION PROCEDURES

BioPark Gift Shop Concession Agreement

The gift shop concession agreement states, "During each year of the Term, Concessionaire will provide the City with the following reports: . . . by November 1, a statement by a certified public accountant approved in advance by the City, certifying that Concessionaire's Monthly and Annual Gross Receipts Reports for the previous contract year are true and correct and are in compliance with the definition of Gross Receipts in Section 1.5 and in accordance with generally accepted accounting principles."

The auditors requested that the BioPark Director provide copies of the two statements that the concessionaire was required to provide by November 1, 2001, and November 1, 2002, from a certified public accountant. At the time of our request, the BioPark Director could not provide the requested documentation. The BioPark had not enforced this contract requirement, and had not obtained, nor requested, the required audited financial statements. As a result, the City has less assurance that the gift shop concessionaire paid all of the monies that were due to the City. In October 2003, the gift shop concessionaire had a certified public accountant prepare the 2001 and 2002 required financial statements, after Internal Audit requested them.

The gift concession agreement includes a clause that requires that "Upon termination of this Agreement for any reason, Concessionaire shall deliver to City a 'Final Audit' covering the time period from the last Annual Gross Receipts Report to the date of termination." The agreement requires that a CPA approved in advance by the City will perform the audit. The concession agreement is now expired and an RFP is in process to award the concession again. Once the concession rights are granted under a new award, the current concessionaire should engage a CPA to perform the Final Audit. Cultural Services should ensure that this requirement of the agreement is complied with.

BioPark Food Concession Agreement

The food concession agreement states, "Commencing one year after the commencement of this Agreement, Concessionaire shall transmit to the Director a statement of its Gross Revenues and Percentage Rentals due for the previous calendar year, Such statement shall be prepared by Concessionaire's certified public accountants in accordance with generally accepted accounting principles." The BioPark had not enforced this contract requirement.

The auditors requested copies of the statements that the concessionaire was required to provide, prepared by their CPAs, relating to calendar years 2000, 2001 and 2002. The

BioPark Director then requested this information from the concessionaire, which provided financial statements for 2001 and 2002. The BioPark had not previously enforced this contract requirement. It had not obtained, nor requested, the required financial statements from this concessionaire.

Without the financial statements, the City has less assurance that the food concessionaire paid all of the monies that were due to the City. In order for the BioPark to ensure that it is receiving all of the revenue that it is entitled to, it needs to require concessionaires to submit the required financial statements, and then to compare this information to its records of the revenues actually received.

All financial information and payments related to BioPark concession agreements is sent directly to the BioPark. There has not been any additional review of this information by the Cultural Services Fiscal Division.

RECOMMENDATION

Cultural Services should review the BioPark Division's concession agreement and contract administration procedures, and should ensure that the BioPark requires vendors to comply with all of the requirements of their agreements and contracts.

Cultural Services should require the current gift concessionaire to contract for a Final Audit of the financial transactions related to the concession agreement. The Final Audit should be required regardless of which vendor is awarded the subsequent BioPark gift concession.

EXECUTIVE RESPONSE FROM CULTURAL SERVICES

"CSD concurs. The department has recently created a centralized contract monitoring function and this will be done."

6. THE CAO AND CULTURAL SERVICES SHOULD REVIEW THE BIOPARK'S HANDLING OF REVENUES GENERATED BY "SPECIAL EVENTS" AT THE BIOPARK.

There is an annual "River of Lights" event held at the Botanic Gardens in December. During the four-year period from 1999 through 2002, the BioPark collected \$625,000 in admissions revenue from the members of the public who attended this event. City employees collected the admissions, and the City paid for the electricity for the lights, and other costs such as the payroll costs of the cashiers, security personnel and maintenance personnel.

The BioPark gave \$588,000 of this revenue to the New Mexico Zoological Society (NMZS) during these four years, and \$36,000 to the Aquarium Association in 1999. According to BioPark personnel, they consider the River of Lights event to be a fundraiser for the NMZS. The BioPark Director indicated that the following section in the City's agreement with the NMZS permits this:

The Society agrees that its purpose and function is to promote the development of the Zoo, to further community interest in the Zoo, and to assist in raising funds for the development and capital improvement of the Zoo... In keeping with the foregoing, the Society will use its best efforts to promote and assist in the development of the Zoo's activities, shall seek to develop broad public, private and volunteer support, and shall aid in the securing of gifts and/or funds supportive of the Zoo's programs, exhibits and collections....

The BioPark Director stated that the fiscal policy of the BioPark is that any admissions revenue received during the BioPark's normal operating hours is deposited by BioPark personnel into the City's General Fund account. He further indicated that the BioPark considers admissions revenue received after 5:00 p.m. to be "special event" revenue, and the money generated is given to the support organizations that sponsor the events.

Generally Accepted Accounting Principles (GAAP) requires the matching of revenues with expenses. This means that when General Fund monies are used to operate a facility and pay costs such as utilities and salaries, any associated revenue should be recorded to the General Fund. Since River of Lights expenses are paid from the General Fund, any associated revenues should be recorded to the General Fund.

The BioPark Director stated that although the BioPark gives all of the River of Lights revenue to the NMZS, the BioPark receives much of those monies back as donations. However, the NMZS's overhead and other expenses absorb a portion of the River of Lights revenues. The two support organizations received \$624,688 in admission revenue from the River of Lights events. The two support organizations gave \$367,659 of these monies back to the BioPark. Another \$151,792 was paid by the support organizations for River of Lights expenses net of sponsorships. After paying the expenses plus lease and rental costs, and donating monies back to the BioPark, the two support organizations retained \$105,237 of the admission revenues collected.

The Constitution of New Mexico, Article IX § 14 (the anti donation clause), states, "Neither the state, nor any county, school district, or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit, or make any donation to or in aid of any person, association or public or private corporation"

Giving City revenue to support organizations appears to be in conflict with the antidonation clause.

According to the BioPark Director, the support groups are not willing to help with fund raising if the revenues are recorded in the General Fund, rather than going directly to support the BioPark. Currently the monies returned to the BioPark by the support organizations are recorded in a Special Revenue Fund that is for the use of the BioPark only. As an alternative to this arrangement, DFAS could establish an enterprise fund for the BioPark. If a BioPark enterprise fund were established, revenues collected by the BioPark would be recorded as revenues of the BioPark enterprise fund and would not be available for General Fund purposes.

RECOMMENDATION

The CAO and Cultural Services should review the BioPark's handling of revenues generated by "special events" at the BioPark. The CAO should consider requesting an opinion from the Legal Department as to the legality of the current arrangement of giving special event admission revenues to the support organizations.

The CAO and the DFAS should determine if it is appropriate to establish an enterprise fund to account for BioPark financial activities.

EXECUTIVE RESPONSE FROM CAO

"The handling of revenues generated by 'special events' and the accounting for BioPark financial activities will be reviewed during the FY/04 CAFR process.

"The Legal Department has reviewed the legality of the agreement and determined that it does not violate the State Constitution's anti-donation clause."

Auditors' Comment

The agreement between the City and the support organization does not address the handling of and accounting for "special event" revenues. The audit does not question whether the agreement itself is in violation of the anti-donation clause. It is the practice of giving City revenue to the support organization that is questioned.

7. <u>CULTURAL SERVICES SHOULD IMPROVE ITS ADMINISTRATION OF</u> AGREEMENTS WITH BIOPARK SUPPORT ORGANIZATIONS

The BioPark has a written agreement with a support organization relating to the City's Aquarium. This agreement states, "The Association will submit an annual report to the City which will include a summary of all gifts received, a summary of its financial transactions for the year, including statements of income and expense and assets and liabilities . . ." The agreement further states, "If the Association's gross annual income in any fiscal year exceeds One Hundred Thousand Dollars (\$100,000.00), the Association shall arrange for and furnish the City an audit of its financial affairs for the fiscal year in accordance with generally accepted governmental auditing standards by an independent professional auditor. . . ."

According to financial statements provided to the auditors by the BioPark, this support organization's revenues exceeded \$100,000 in 1999 and 2002. However, the support organization did not "furnish the City an audit of its financial affairs" for the 1999 and 2002 fiscal years. No financial statements were provided for 2000 and 2001. The BioPark did not enforce the contract requirement for financial statements and audits, relating to the support organization. As a result, the City does not have assurance that the support group's financial affairs were proper during this period.

RECOMMENDATION

Cultural Services should improve its administration of agreements with BioPark support organizations.

Cultural Services should require that support organizations provide the required financial statements and audits, and review them for propriety.

EXECUTIVE RESPONSE FROM CULTURAL SERVICES

"CSD concurs. The department has recently created a centralized contract monitoring function and this will be done."

8. <u>CULTURAL SERVICES SHOULD ONLY COMMIT TO ARCHITECT AND CONSTRUCTION EXPENDITURES AFTER CITY COUNCIL APPROVAL OF THE PROJECT</u>

In December 1997, the City Council appropriated \$2 million from the 1997 General Obligation Bonds for a construction project at the Zoo, the Animals of Africa project. The Capital Implementation Program (CIP) documentation (<u>Capital Project Request Form</u>) for this project states the purpose as, ". . . development of animal exhibitory and

management areas for the African collection. Safari discovery stations, graphics/education panels, walkways, food concessions and service roads will be included." According to the BioPark Director, the railroad system was not part of the original scope of the Animals of Africa project approved by the City Council.

Additional monies were appropriated from the 1999 and 2001 General Obligation Bonds, for a total appropriation of \$5.2 million. On June 13, 2002, the City Council approved a modification to the Animals of Africa project. This modification stated, "The scope is hereby expanded to include a railroad system that will enable visitors to view not only Animals of Africa but will extend to other exhibits through out the zoo."

Prior to the approval by the City Council of this project modification, Cultural Services had already committed to building the railroad system. At the time that the BioPark committed to the railroad system design expenditures, there were not any moneys appropriated for this project. In April and June of 2000, two years prior to the City Council approval of the railroad system, Cultural Services personnel executed agreements with an architect for the design of the Animals of Africa project, including the railroad system. The current BioPark Director signed these agreements for approval, both as the project manager and as the acting Cultural Services director. This is a control weakness, because it eliminates one level of the review and approval process for the commitment of CIP funds. As of May 2002, the architect had incurred \$49,000 of costs relating to the unapproved railroad project. Although payment was delayed until after the approval of the change in scope, the work was performed prior to the approval.

In April of 2002, also prior to the approval of the City Council of this project modification, the CAO sent a notice of award to a construction contractor for the Animals of Africa project, including the construction of the railroad system. The bid solicitation for this construction contract had been issued in January 2002, six months prior to the City Council approval of the project modification for the railroad system. The notice to proceed on the project was issued on May 28, 2002.

The BioPark committed to design and construction for the train project prior to City Council approval and appropriation. A time line for the Animals of Africa Project is presented below in Table 1.

Table 1

Date (enactment #)	G. O. Bonds Animals of <u>Africa</u>	Explanation
January-98 (8-1998)	\$2,000,000	Original Animals of Africa Appropriation
April-99 (41-1999)	1,600,000	Phase II (Adventure Africa)
December-99 (8-2000)	1,600,000	Phase II (Adventure Africa)
July-00		Additional Services Agreement w/ Architect for Train Layout
August-00		Additional Services Agreement w/ Architect for Rail Design Survey and Construction Staking
January-02		Bid Solicitation for Animals of Africa (scope includes the train)
April 12, 2002		Notice of Award sent to construction contractor (scope includes the train)
May 28, 2002		Notice to Proceed given to construction contractor by CIP
June 13, 2002 (68-2002)		Scope of Animals of Africa is expanded to include train and is approved by City Council

RECOMMENDATION

Cultural Services should ensure that controls are functioning as intended to prevent the recurrence of BioPark personnel making contractual commitments prior to City Council approval and appropriation of funds.

EXECUTIVE RESPONSE FROM CULTURAL SERVICES

"CSD agrees with the recommendation. The department has implemented controls to ensure compliance with City rules and regulations relating to contracts."

9. <u>CULTURAL SERVICES SHOULD CHARGE EXPENDITURES TO THE FUND FROM WHICH THEY WERE APPROVED</u>

The Cultural Services BioPark used \$12,276 of Animals of Africa project funds to purchase a tractor for use in the Zoo. The purchase order stated that this purchase was to

be made with City General Fund (fund 110) monies. Animal of Africa project funds should not have been used to pay for an item that was approved based upon the purchase being paid for with General Fund monies.

Part of the process for departments acquiring property items is that the CAO Department Office of Management and Budget (OMB) must approve the proposed purchase and verify that funds are available. The documentation relating to this purchase shows that the OMB approved the purchase to be made with General Fund monies, not CIP funds.

The request to purchase the tractor was also sent to the Chief Administrative Officer for his approval because the City had a freeze on unbudgeted capital expenditures. The justification memo written by the BioPark Director and sent to the CAO states, "The BioPark Division of Cultural Services has a 1977 Ford tractor which is in need of an extensive amount of repairs including a new engine. This piece of equipment is one of only two tractors at the BioPark and is used extensively on a daily basis." The CAO approved the purchase to be made from General Fund monies. The cost of the tractor was encumbered in the General Fund, but the actual payment was charged to the Animals of Africa project.

Funds that were appropriated by the City Council for the Animals of Africa project were used by the BioPark to pay for operating and maintenance expenses for other Zoo facilities. For example, an invoice for \$1,046 for work relating to the Zoo's bird show was paid for from Animals of Africa project funds. This was done despite a notation by BioPark personnel on the vendor's invoice that the Animals of Africa project should **not** be charged for this work. Another invoice from the same vendor for \$2,153 was also paid for with Animal of Africa project funds, although the work was for repairs to existing animal cages, and work at the Zoo's clinic.

The use of CIP funds to pay for items that are customarily considered operating expenses is inappropriate. This practice results in the understatement of operating expenses, and diverts monies that were appropriated for capital projects. Sufficient funds may not be available to complete the projects as designed because of the diversion of funds.

Cultural Services did not exceed its program appropriation for the Zoo in FY2001. The program reverted \$18,597 to the General Fund. However, if all of the Zoo's operating costs had been appropriately charged to the General Fund, the Zoo might have exceeded its appropriation unless expenditures were reduced in other areas.

RECOMMENDATION

Cultural Services should review BioPark expenditures to ensure that they are charged to the fund from which they were approved. If funding sources change, new approvals should be obtained.

Cultural Services should not pay General Fund expenses with CIP funds.

Cultural Services should ensure that CIP project funds are used solely for the purposes of the projects.

EXECUTIVE RESPONSE FROM CULTURAL SERVICES

"The City's financial controls are the same for CSD as they are for all other City departments. The Administration will continue to emphasize proper recording of all financial transactions for all departments. The current CSD director reviews and approves all purchase requisitions for operating and CIP purchases. Additionally, DMD/CIP fiscal staff closely monitors all proposed CIP purchases to ensure compliance with the project scope and that project funds are used for the intended purpose."

10. <u>CULTURAL SERVICES SHOULD ENSURE THAT FINANCIAL TRANSACTIONS ARE PROPERLY DOCUMENTED</u>

We reviewed the transactions recorded in the BioPark Seasonal/Contractual Labor activity and noted that there were six journal entries during June 2001 moving a combined total of \$48,370 of expenditures from several activities in the General Fund to the Seasonal/Contractual Labor activity in the special revenue fund. The expenditures that were moved by journal vouchers originated in the following BioPark General Fund activities:

- Facility Operations
- Visitor Services
- Botanical Gardens
- Aquarium
- Education

We requested the documentation to support the journal entries. However, the BioPark was unable to provide us with detailed documentation to support the validity of the journal entries. The City of Albuquerque On-line Journal Voucher Policy Statement, dated March 19, 1996, requires that "Backup documentation (ie. a copy of the related

<u>source document and/or detailed well-labeled worksheet</u>) to support the JV is to be retained by the initiating department. Receiving departments, Financial Reporting, Internal Audit or external auditors may, at any time, request copies of backup documentation." Without the supporting documentation, we were not able to determine if the journal entries were appropriate.

RECOMMENDATION

Cultural Services should ensure that financial transactions are properly documented. All journal vouchers should be reviewed for validity and to ensure they are adequately supported prior to entry on the City's on-line journal voucher system.

Cultural Services should retain the support for all journal entries in a central location so it can be easily accessed when requested.

RESPONSE FROM CULTURAL SERVICES

"This finding is 2.5 years old. Currently, all journal vouchers (JVs) are properly documented in accordance with the May 30, 2003, DFAS policy regarding JVs. This policy also requires close scrutiny by DFAS principal accountants before processing any department's JV.

"CSD agrees and all JV's are now located in a centralized location."

Auditors' Comment

The Animals of Africa project is not yet complete. Therefore, any transactions that impact the project's funding are relevant regardless of when they initially occurred.

11. <u>DFAS AND THE MUNICIPAL DEVELOPMENT DEPARTMENT CIP DIVISION SHOULD COLLABORATE TO DETERMINE THE BEST PURCHASE METHOD FOR SOME TYPES OF CIP PURCHASES.</u>

The construction contractor purchased the train (engine and cars) and train track for the BioPark's railroad. According to the contractor's "scheduled value" document, the value of these two items was \$430,692. The BioPark and the Purchasing Division of DFAS considered purchasing the train directly from the manufacturer in Canada, rather than having the construction contractor purchase these items. The construction contractor charged the City approximately 10% above the purchase cost of these items, because he purchased these items, instead of the City purchasing them directly.

According to the BioPark Director, he contacted the Purchasing Division and requested a direct purchase of the train; however, the Purchasing Division recommended that the construction contractor purchase the items. There are potential cost savings to the City, if certain items for CIP projects could be purchased directly by the City, instead of through a contractor.

RECOMMENDATION

DFAS and the Municipal Development Department CIP Division should collaborate to determine the best purchase method for some types of CIP purchases.

EXECUTIVE RESPONSE FROM DFAS AND MUNICIPAL DEVELOPMENT DEPARTMENT

"DFAS and the Department of Municipal Development (DMD) do collaborate on an on-going basis. Although it may appear that a direct purchase rather than through a contractor with a markup will always save money, that is not always the case.

"With respect to the purchase of the train and track, Purchasing determined that the train, track and installation could not be purchased together due to market conditions and the requirement that installation be done by a New Mexico licensed contractor. The train would have to be purchased from one source, the track from another and the installation from a New Mexico licensed contractor. competition was available, all would have to be purchased by request for bids with an uncertain outcome as to the costs. Therefore, in order to save time, avoid the problems and liabilities associated with multiple providers, and allow the purchase of a train consistent with the design concept, the decision was made, in consultation with CIP, to purchase through the construction contractor. The contractor's ability to provide installation or purchase track and installation as a package, negotiate terms more freely and obtain contractor discounts were considered favorable to obtaining the best price and the results most advantageous to the city."

12. <u>THE MUNICIPAL DEVELOPMENT DEPARTMENT SHOULD COMPLY WITH</u> THE CITY'S CAPITAL IMPROVEMENTS ORDINANCE.

As a part of our audit test work, we requested CIP reports to determine what had been reported to the City Council regarding the Zoo train.

The City's Capital Improvements Ordinance § 2-12-5 R.O.A. 1994, states:

The Mayor shall submit a status report to the Council summarizing the implementation of each Capital Improvements Program at annual intervals . . .

- (A) The annual report shall contain the following information for each current project in the Capital Improvements Program: (These requirements shall be included first in the September 2002 annual report.)
 - (1) Project name.
 - (2) Total estimate project cost.
 - (3) Total funding appropriated to project and also itemized as to source.
 - (4) Status, e.g. feasibility study completed, design completed, date construction began or is anticipated to begin.
 - (5) Estimated completion date of project.
- (B) The status report shall also list every change made pursuant to § 2-12-4 and shall include the following information about each change:
 - (1) The specific project that was changed;
 - (2) The total amount originally approved by the Council for the project;
 - (3) The amount of the increase or decrease that was authorized without prior Council approval;
 - (4) The reason(s) for the change; and
 - (5) If the amount designated for a project was increased, the account(s) and project(s) from which the funds were transferred, or if the amount designated for a project was decreased, the account(s) and project(s) to which the funds were transferred.
 - (6) If a change combines all or parts of projects, the individual account(s) and project(s) which were combined and the amount of funds involved from each.

We reviewed the annual CIP status report for the period from July 2001 through June 2002. This report should have complied with the informational requirements of the ordinance. However, the following information, required by the ordinance, was not included in the report:

Total estimate project cost.

- Status, e.g. feasibility study completed, design completed, date construction began or is anticipated to begin.
- Estimated completion date of project.
- If the amount designated for a project was increased, the account(s) and project(s) from which the funds were transferred, or if the amount designated for a project was decreased, the account(s) and project(s) to which the funds were transferred.
- If a change combines all or parts of projects, the individual account(s) and project(s), which were combined, and the amount of funds involved from each.

The CIP Division has 17 approved positions to provide guidance and support in planning and implementing the capital outlay program. Providing information required by City ordinance should be one of the CIP Division's priorities.

RECOMMENDATION

The Municipal Development Department should review the CIP Division's priorities and determine how it will comply with the reporting requirements of the Capital Improvements Ordinance.

EXECUTIVE RESPONSE FROM MUNICIPAL DEVELOPMENT DEPARTMENT

"DMD agrees. The department has made considerable progress in this area, reorganizing and resetting priorities in the CIP division. The next annual CIP status report will include all required information."

13. CULTURAL SERVICES SHOULD COMPLY WITH THE TRAVEL REGULATIONS.

In January 1999, three City employees went to Disney World in Florida with an employee of the architectural firm (the architect) that was designing the Animals of Africa project. The BioPark Director and Assistant Director, and the previous Director of Cultural Services, went on this trip. Five days prior to leaving on this trip, the BioPark Director issued a reimbursable services change order to the architect for \$3,200, to reimburse the architect for the costs of the trip for both the architectural firm employee and the City employees. As a result, the BioPark Director approved his own travel. This change order does not mention who the travelers would be. (The architect paid for the costs of the trip, and then the City reimbursed the architect for these costs).

The change order authorized by the BioPark Director stated, "The specific work falling under this authorization will be for travel to Florida to view Disney's Animal Kingdom which is one of the most progressive, modern, naturalistic exhibits with an African theme." A reimbursement authorization letter to the architect from the BioPark Assistant Director stated, "These reimbursable travel expenses shall be for travel to observe and research the Animal Kingdom exhibit at Disney World in Orlando, Florida." The BioPark Assistant Director also sent a letter to the architect, authorizing the expenditures for this trip; thereby approving this benefit for himself and his two immediate supervisors. This letter also did not mention who the travelers would be.

Because the three City employees traveled in this way, the following problems resulted:

- There were not travel authorizations prepared and authorized for the three employees, as required by the City's travel rules
- There was no written justification for a vehicle rental on this trip, as required by the City's travel rules.
- There was no CAO approval for the Department Director's travel, as required by the City's travel rules

The Travel Regulations, Travel Authorization Guidelines, states:

A Travel Authorization Form . . . is the document through which official travel is requested and authorized. Travel Authorization requests must be submitted and approved in advance of travel and may not be signed by the traveler as authorizing or approving travel. Travel authorizations must be signed by both the traveler and the official authorized to approve such travel. . . Due to the relatively high costs associated with travel, authorizations will only be approved on a trip-by-trip basis.

Both the previous Cultural Services Director and the BioPark Director should have been familiar with the Travel Regulations. The Travel Regulations delegate authority to "Department or Agency Directors." The delegated authority includes: approving travel by department employees; communicating the City's travel regulations to all travelers for whom they authorize travel; and establishing controls to ensure that only travel essential to the purposes of the City is authorized.

Administrative Instruction No. 3-12, <u>Vendor/City Relations</u>, states, "It is our policy to maintain and practice the highest possible standards of business ethics, professional courtesy and competence in all of our business dealings. At all times, applicable laws must be scrupulously observed. In this regard, the following will be observed when

dealing with suppliers and their representatives: . . . It is prohibited to accept at a suppliers expense travel, accommodations, meals and all other gratuities."

The City eventually paid for the travel by City employees; however, the travel was not authorized and approved in accordance with the City of Albuquerque Travel Regulations.

This is a repeat finding from Audit Report 96-121. That audit stated, ". . . the Vendor paid for travel costs." The prior audit report noted problems including the lack of travel authorizations, and no CAO approval for certain items. Cultural Services responded that "In the future, all Zoo travel expenses will be paid by the General Fund or the Special Revenue Fund, either of which are in accordance with the City's Travel Regulations and budgetary approval process." However, these previously identified problems were repeated by BioPark personnel in their trip to Disney World.

It appears that the Cultural Services Fiscal Division is not adequately monitoring the fiscal activities of the BioPark Division. The Fiscal Division employees should advise the Department Director when activities may not be in accordance with City policy.

RECOMMENDATION

Cultural Services should develop internal procedures to ensure that the City Travel Regulations are strictly enforced. Travel Authorizations should be prepared and approved for all travel by City employees. The Department Director should obtain the CAO's approval for any travel. Cultural Services employees should not be allowed to approve or authorize their own travel.

Cultural Services should comply with Administrative Instruction No. 3-12. Employees should avoid situations that give the appearance of violation of City regulations, such as travel paid by a vendor or contractor.

The Cultural Services Fiscal Division should notify the Department Director of any potential violations of City rules and regulations.

EXECUTIVE RESPONSE FROM CULTURAL SERVICES

"The incident reported occurred five years ago. This Administration and the CSD director are complying with all City Travel Rules and Regulations."

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Auditors' Comment

The Animals of Africa project is not yet complete. Therefore, any transactions that impact the project's funding are relevant regardless of when they initially occurred.

14. MISCELLANEOUS FINDINGS

The following findings do not require responses, but should be considered as additional ways to improve the management of BioPark operations and construction projects by Cultural Services.

A. The City utilizes a vendor that provides temporary employees to various City departments. According to the Purchasing Division, state statute prohibits these vendor temporary employees from being used to perform construction work. The Purchasing Division has informed City Departments of this restriction.

The BioPark charged approximately \$87,000 for temporary employees to the Animals of Africa construction project. Since the vendor's temporary employees are prohibited by state statute from performing construction work, and the BioPark is aware of this restriction, it appears that these costs may have been inappropriately charged to the Animals of Africa construction project. Cultural Services should ensure that the BioPark does not use temporary vendor employees to perform construction work, in violation of state statutes.

B. The City's <u>Personnel Rules and Regulations</u>, Section 306.3, Temporary Employees, states, "A temporary employee is one who is given a termination date at the time of appointment and whose length of service may not exceed two (2) years. Temporary employees shall be terminated two (2) years from the date of hire."

The Zoo utilizes a number of temporary City employees to work on its construction projects. One of these temporary employees shows a hire date of September 1998, on the City's payroll system "Position Control Report", as of November 2002. Cultural Services should ensure that the BioPark complies with the <u>Personnel Rules and Regulations</u>, regarding temporary City employees.

C. Personnel in the City's Capital Implementation Program use a computerized cost tracking system to record and track project costs. BioPark personnel also record and track the same information in a computer system of their own. It is redundant for City personnel to use two different systems to record the same information. We recommend that Cultural Services evaluate this situation and determine if they can

reduce their work effort, by utilizing the information that is generated by Capital Implementation Program personnel.

D. Section 16 of the City's agreement with the food concessionaire states, "In order to preserve the tax exempt status of any future City Bio Park revenue bonds it is a condition of this Agreement that the Concessionaire, its successor and assigns in interest under this Agreement hereby agrees that for federal income tax purposes, (1) it shall not claim depreciation or any investment credit, and (2) it shall make and file an irrevocable election not to claim depreciation or an investment credit, with respect to the Concession Facilities. The Concessionaire agrees to send a copy of its election to the office of the Director."

The BioPark Director informed us that the concessionaire had not provided a copy of the "election", and that he was not sure why this clause was in the contract. The BioPark Director, the concessionaire's Chief Financial Officer, and the City's Treasurer determined that the clause in the contract was not applicable to this concession situation. The BioPark should ensure that if a section of a contract does not have a valid purpose, it is brought to the attention of the Purchasing Division so that the section can be deleted.

E. When the Zoo's railroad system is completed, it will include a train station with a gift shop. According to the BioPark Director, the train will be operated by employees of the next gift concessionaire, who will be selected under an RFP, which has not yet been issued (See Audit Finding No. 3). The BioPark Director further indicated that City personnel would maintain the train equipment (engine and cars) and the train track.

The running of the train system involves the transportation of Zoo patrons, and the operation and maintenance of heavy moving equipment (i.e., the train and cars) and a track system. Consequently, for the safety of the public and to minimize the City's risk, it is imperative that experienced and trained personnel operate the railroad system. It is also imperative that the railroad system be maintained and repaired by employees who have experience in this type of operation.

Cultural Services should ensure that the vendor and City employees who operate and maintain the railroad system are experienced and trained to work on railroad systems.

CONCLUSION

By implementing the above recommendations, the Cultural Services Department can improve the management of its construction projects, and the operations of the BioPark.

We appreciate the cooperation of Cultural Services Department and CIP personnel during th audit.		
Principal Auditor	Senior Auditor	
REVIEWED and APPROVED:	APPROVEDFOR PUBLICATION:	
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